IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 59 of 1986

MADAN LAL
V/S
MUNICIPAL BOARD, DEEDWANA

Mr. JK BHAIYA, for the appellant / petitioner

Mr. JM BHANDARI, for the respondent

Date of Order : 27.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The sole-appellant, Madan Lal is reported to have died, and an application has been filed on 21.7.2006 under Order 22 Rule 3, and another application under Order 22 Rule 9 CPC, read with Section 5, Limitation Act.

In para-2 of the application, the deceased Madan Lal is said to have left 7 legal representatives. The application is accompanied by Vakalatnama signed on behalf of three of the legal representatives being Ramgopal, Kalu Ram and Ghanshyam. On being asked to the learned counsel about the Vakalatnama of other legal representatives, learned counsel gave out that legal representatives No.5, 6 and 7 are the daughters, who are living away, their Vakalatnama could not be obtained, and regarding other legal representative Natwar Lal, it was given out that he had gone in adoption to Durga Lal, and had wrongly been

described as legal representative of Madan Lal.

It may be noticed here that alongwith this appeal, in the cause list very next item listed today is second appeal No.60/86 being Durga Lal Vs. Municipal Board, Didwana. Since the learned counsel submitted that Natwar Lal had gone in adoption to Durga Lal, I looked up that file of Durga Lal, and from a collective reading of the two files, being of this appeal, and of the appeal of Durga Lal, it transpires that the shop in question is adjoining to the shop of Durga Lal, who also filed identical suit out of which second appeal No.60/86 arises and perusal of the record of that appeal shows, that it was during pendency of that suit, that Durga Lal had died, and Natwar Lal, who has been described as legal representative No.4 in the application, was substituted as legal representative of Durga Lal.

Both the suits were tried together, inasmuch as, both the suits were decided on the same date, being 13.12.83 by the same Court, and the appeals were filed being appeals No.5/84 (in Durga Lal's case), and 6/84 (in Madan Lal's case) by the Municipality, and both the appeals were decided also by the Appellate Court on the same date being 11.10.85. Against these two decrees, the two separate appeals have been filed. One by Natwar Lal and other by Madan Lal.

In this background, a look at the application shows that Madan Lal is alleged to have died on 18.8.96,

while the present application has been filed on 21.7.2006, and a look at the application filed under Order 22 Rule 9 CPC read with Section 5 of the Limitation Act shows that the only reason given for explaining the delay is, that on 17.7.2006, the appeal was listed before the Court, and the counsel for the appellant contacted through phone, and during discussion, it was found that Madan Lal has expired, whereupon the counsel informed that it is necessary to file application for substitution of legal representatives, and that the fact of filation of the present appeal by Madan Lal remained unknown to his other family members.

It is, on the face-value of the application, that Natwar Lal claims to be one of the legal representatives, and the second appeal No.60/86 (present appeal being 59/86) has been filed by Natwar lal, which obviously shows that Natwar Lal is very much in know of the fact, that litigation is going on with respect to the demolition of the portion of the shop, and Natwar Lal is none-else than the real son of appellant Madan Lal, and thus, the family members as detailed in para-2 of the application, are required to be assumed to be having knowledge of the present litigation, and the story about having no knowledge is ex-facie not believable.

Thus, it is clear that no sufficient cause has been shown for not bringing on record the legal representatives of Madan Lal within time, nor any cause has been made out to persuade this Court to set aside the

automatic abatement.

The applications are, therefore, dismissed.

Since the abatement is automatic, the appeal is formally dismissed as abated.

(N P GUPTA),J.

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